

1 DENNIS J. HERRERA, State Bar #139669  
2 City Attorney  
3 KRISTEN A. JENSEN, State Bar #130196  
THOMAS S. LAKRITZ, State Bar #161234  
4 VICTORIA WONG, State Bar #214289  
Deputy City Attorneys  
5 1 Dr. Carlton B. Goodlett Place  
City Hall, Room 234  
6 San Francisco, California 94102-4682  
Telephone: (415) 554-6547  
Facsimile: (415) 554-4747  
E-Mail: tom.lakritz@sfgov.org  
7

8 Attorneys for Defendant  
CITY AND COUNTY OF SAN FRANCISCO  
9

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 METRO FUEL LLC, a Delaware limited  
liability company,  
14 Plaintiff,

15 vs.  
16

CITY OF SAN FRANCISCO, a municipal  
corporation, COUNTY OF SAN  
FRANCISCO, a subdivision of the State  
of California, CITY AND COUNTY OF  
SAN FRANCISCO, a chartered California  
city and county and DOE 1 through DOE  
10,

21 Defendants.  
22

Case No. C07-6067 PJH

23 **STIPULATION AND [PROPOSED]  
ORDER GRANTING DEFENDANTS'  
MOTION FOR JUDGMENT ON THE  
PLEADINGS**

24 It is hereby STIPULATED and AGREED, by and between Plaintiff Metro Fuel LLC ("Metro  
Fuel") and the City of San Francisco, County of San Francisco, and City and County of San Francisco  
25 (collectively, "the City" or "San Francisco"), through their attorneys of record as follows:

26 1. On April 17, 2008, Metro Fuel filed its First Amended Complaint.  
27 2. In its First Amended Complaint, Metro Fuel alleged one cause of action under 42  
U.S.C. § 1983. Metro Fuel's one cause of action, however, was premised on three distinct legal

1 theories. First, in paragraphs 23-80, Metro Fuel alleged that Article 6 of the San Francisco Planning  
 2 Code violated the First Amendment of the U.S. Constitution (the "*Metro Lights* claim"). Second, in  
 3 paragraphs 81-89, Metro Fuel alleged that the practical effect of San Francisco's ban on new general  
 4 advertising signs (San Francisco Planning Code section 611) is the reservation "for itself a monopoly  
 5 over outdoor advertising signs in San Francisco" in violation of the First Amendment of the U.S.  
 6 Constitution (the "Government Monopoly claim"). Third, in paragraphs 90-101, Metro Fuel alleged  
 7 that various provisions of Article 6 of the San Francisco Planning Code discriminate against non-  
 8 commercial speech in violation of the First Amendment of the U.S. Constitution (the "Non-  
 9 Commercial Speech claim").

10       3. On August 29, 2008, the City filed a motion for judgment on the pleadings under  
 11 Fed.R.Civ.P. 12(c) attacking Metro Fuel's *Metro Lights* claim on several grounds. On September 12,  
 12 2008, Metro Fuel filed its opposition to the City's motion.

13       4. On January 6, 2009, the United States Court of Appeals for the Ninth Circuit (the  
 14 "Ninth Circuit") issued its decision in *Metro Lights, L.L.C. v. City of Los Angeles*, --- F.3d ----, 2009  
 15 WL 22922 (C.A. 9 (Cal.)) (the "*Metro Lights* decision"). The Ninth Circuit held that Los Angeles's  
 16 regulatory scheme prohibiting new off-site general advertising signs did not violate the First  
 17 Amendment, even though Los Angeles allowed off-site advertising on city-owned transit stops and  
 18 other street furniture.

19       5. Metro Fuel concedes that the *Metro Lights* decision, to the extent it is not reversed in  
 20 an *en banc* proceeding or by the United States Supreme Court, disposes of its *Metro Lights* claim in  
 21 this action against San Francisco.

22       6. Accordingly, the parties agree that this Court should grant San Francisco's motion for  
 23 judgment on the pleadings with respect to the *Metro Lights* claim alleged in paragraphs 23-80 of the  
 24 First Amended Complaint.

25       7. The parties acknowledge that Metro Fuel has reserved its right to move this Court to  
 26 reconsider this Stipulation and Order, as allowed by the Federal Rules of Civil Procedure, if the  
 27 *Metro Lights* decision is reversed in an *en banc* proceeding or by the United States Supreme Court.  
 28

1       8.     The parties acknowledge that Metro Fuel's Government Monopoly and Non-  
2 Commercial Speech claims remain in this action.

3       9.     The parties further acknowledge that the remaining grounds set forth in the City's  
4 Fed.R.Civ.P. 12(c) motion are not addressed in this stipulation and order, and that the City may bring  
5 those challenges to Metro Fuel's Government Monopoly and Non-Commercial Speech claims in a  
6 subsequent motion or at trial.

7 DATED: January 20, 2009

DENNIS J. HERRERA  
City Attorney

9 By:       /s/  
10 THOMAS S. LAKRITZ

11 Attorneys for Defendant CITY AND COUNTY  
12 OF SAN FRANCISCO

13 DATED: January 20, 2009

LAW OFFICES OF PAUL E. FISHER

14 By:       /s/  
15 PAUL E. FISHER

16 Attorneys for Plaintiff METRO FUEL, LLC

18 DATED: January 20, 2009

EMERY CELLI BRINCKERHOFF & ABADY LLP

19 By:       /s/  
20 ERIC HECKER

21 Attorneys for Plaintiff METRO FUEL, LLC

1 IT IS SO ORDERED:

2 Pursuant to the stipulation of the parties, the City's motion for judgment on the pleadings  
3 under Fed.R.Civ.P. 12(c) is GRANTED IN PART and Metro Fuel's *Metro Lights* claim is  
4 DISMISSED. Metro Fuel's Government Monopoly and Non-Commercial Speech claims, set forth in  
5 paragraphs 81-89 and 90-101, respectively, of the First Amended Complaint remain in this action.  
6 The remaining grounds asserted in the City's Fed.R.Civ.P. 12(c) motion are not addressed in this  
7 order, and the City may assert those challenges to Metro Fuel's Government Monopoly and Non-  
8 Commercial Speech claims in a subsequent motion or at trial.

9  
10 Dated: 1/22/09

